APPENDIX

Supreme Court, U. S.
FILED
JUL 30 1975
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1409

LONNIE NORTH, *Appellant*

v.

C. B. RUSSELL; NATHANIEL "TRAP" HELTON,
JAILER OF HARLAN COUNTY, *Appellees*

ON APPEAL FROM THE COURT OF APPEALS OF KENTUCKY

FILED MAY 9, 1975

PROBABLE JURISDICTION NOTED JUNE 23, 1975

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1. RELEVANT DOCKET ENTRIES

Court of Appeals of Kentucky

NO.		Date Filed
1.	Appeal Filed	8 - 5-75
2.	Appellant Filed Record, Notice of Appeal and Motion for Appeal	8 - 5-75
3.	Appellant Filed Briefs	8 - 5-75
4.	Appellees filed notice and motion to rescind bail	8 - 6-74
5.	Appellees filed notice and motion to dismiss appeal	8 - 6-74
6.	Appellant filed Response to Motion to Rescind Bail, Motion for Stay, and Motion to Advance Appeal	8 - 8-74
7.	Per Curiam Opinion Delivered Affirming	8 -12-74
8.	Appellant Filed Notice of Appeal to U.S. Supreme Court	8 -28-74
9.	Appellant Filed Motion to Stay Mandate	8 -28-74
10.	Appellee Filed Response to motion for stay of mandate	8 -29-74
11.	Court Delivered Order Overruling Motion for Stay	9 - 4-74

RELEVANT DOCKET ENTRIES

NO.		Date Filed
12.	Received Order of U.S. Supreme Court Staying Enforcement and Execution of Mandate	9 -12-74
13.	Order Delivered to Court of Appeals staying enforcement and execution of mandate (per U.S. Supreme Court Order)	9 -12-74
14.	Mandate Issued	9 -12-74
15.	Received Order of U.S. Supreme Court Docketing Appeal	10-22-74
16.	Appellee Filed Motion to File Order of U.S. Supreme Court and Copy of Motion to Dismiss or Affirm of Record in U.S. Supreme Court	12-30-74
17.	Motion to File Supreme Court Order and Motion to Dismiss or Affirmed sustained by Order Delivered	1 -14-75
18.	Appellee's Motion to Dismiss or Affirm as filed in the U.S. Supreme Court filed in this appeal	1 -14-75
19.	Appellee Filed Motion for leave to File Brief on Remand	1 -23-75

RELEVANT DOCKET ENTRIES

NO.		Date Filed
20.	Mandate of U.S. Supreme Court Received (Issued 1-22-75)	1 -24-75
21.	Appellee Filed Response to Appellant's Motion for leave to File Brief on Remand and moved for leave to File Brief on Remand	2 - 3-75
22.	Appellant Filed Motion for leave to File Copies of Appellants' Jurisdictional Statement and Response to Appellees' Motion to Dismiss or Affirm in the U.S. Supreme Court	2 - 4-75
23.	Affirmed (Justice Palmore)	3 -21-75
24.	Appellant Filed Notice and Motion to Stay Execution and Enforcement of Mandate	3 -31-75
25.	Appellant Filed Notice of Appeal to U.S. Supreme Court with Designation of Record	3 -28-75
26.	Court Order Delivered Granting Stay of Execution and Enforcement of the Mandate	4 -15-75

II. Petition of Writ of Habeas Corpus

HARLAN CIRCUIT COURT

2083

LONNIE NORTH ..... PETITIONER

VS: PETITION FOR WRIT OF HABEAS CORPUS

C. B. RUSSELL; NATHANIEL "TRAP" HELTON, Jailer of Harlan County ..... RESPONDENTS

(1) The Petitioner, Lonnie North, being first duly sworn, represents to the Court that he has been and is being detained by the Jailer of Harlan County, Kentucky, Nathaniel "Trap" Helton, in the Harlan County Jail under the order and judgment of the Respondent, C. B. Russell, Lynch City Court Judge, without lawful authority, the pretended cause of such imprisonment being as follows:

> "On or about Wednesday, July 10, 1974, the Petitioner was detained by the Chief of Police at Lynch, Kentucky, whose name is unknown to the Petitioner and held in the City of Lynch, Kentucky for the arrival of the Cumberland City Police; whereupon the Petitioner was taken from the City of Lynch by Chuck Hollitt to the City of Cumberland, Kentucky, a separate municipal entity, and cited by the said Cumberland City Police upon a charge of reckless driving; where-

upon the Petitioner returned to his home at Lynch, Kentucky. Shortly thereafter, the Petitioner received a telephone call from the Lynch City Police directing him to come to the Lynch City Hall to remove the motorcycle upon which the Petitioner was riding at the time that he was detained by Lynch City Police; whereupon the Petitioner traveled to the Lynch City Hall in company with his brother, Ronald North, and his Father, Eli North, for the purpose of assuming possession of the motorcycle; whereupon, a Lynch City Policeman known only as "Potter", whose full and true name is unknown to the Petitioner, directed the Petitioner to Lynch City Hall and cited the Petitioner accusing him of the crime of driving while intoxicated; whereupon, the Petitioner was immediately admitted to bail and returned to his home at Lynch, Kentucky under directions from the said "Potter" to return to City Hall on Thursday, July 18, 1974, at the hour of 8:00 P.M.; whereupon, the Petitioner appeared at the City Hall at the appointed time and place before the Respondent, C. B. Russell who, in the presence of Eli North, Terry Creech, and Hal Woods, called for the Petitioner's plea to the charge of driving while intoxicated, with the Petitioner responding, "Not guilty". Whereupon, in the presence of the aforesaid witnesses, the Respondent, C. B. Russell, stated, "I will give you a jury trial if it takes all damn night". Then he left the room and was gone about ten minutes. He came back and said, "I

have talked to a lawyer and we don't need no jury, I am going to try you myself. I fine you $150.00, suspend your operator's license and give you 30 days in County Jail". Whereupon he said, "Where are the Police". Upon arrival of the police, the said Respondent, C. B. Russell, handed the said city police a slip of paper and said, "Take him to the Harlan County Jail". Whereupon, without any evidentiary hearing whatsoever, without benefit of legal advice or legal counsel, without any advice as to his legal rights, without right to confront the witnesses against him and to introduce evidence of his innocence the Petitioner was taken to the Harlan County Jail by said police officer to serve 30 days, as he was so advised, where he presently remains.

(2) All of the above procedures relating to the trial of the said Petitioner are in total disregard of the rights of the Petitioner as an accused in a criminal case, as guaranteed by the Fourteenth Amendment to the Constitution of the United States of America, and deprive the Petitioner of his right to due process of law under the Fourteenth Amendment and to equal protection of laws under the Fourteenth Amendment to the Constitution of the United States of America and renders the conviction of the Petitioner void *for the following reasons*:

(1) KRS 26.010, conferring criminal jurisdiction upon cities of all classes and KRS 26.200 fixing the qualifications of police judges in cities of the 5th and

6th classes, deny Petitioner equal protection of the laws (a right accorded to him under the Fourteenth Amendment to the Constitution of the United States of America), he being a person accused of crimes against the laws of Kentucky in the police court of the City of Lynch, Kentucky, a city of the 5th class presided over by a Judge, not cognizant of the constitutional, statutory and common-law substantive and procedural rights accorded to him as a citizen of Kentucky and of the United States of America, whereas a person similarly accused in a city of the 1st and 2nd class is, by virtue of the same chapter provided a judge who is so trained in the law and who is cognizant of such rights.

(2) KRS 26.200, fixing the qualifications of the police judges in cities of the 5th class denies to Petitioner due process of law (a right accorded to him under the Fourteenth Amendment to the Constitution of the United States of America), he being a person accused of crimes against the laws of Kentucky in the police court of the City of Lynch, Kentucky, a city of the 5th class presided over by a Judge, to-wit: C. B. Russell, the said C. B. Russell not being a person cognizant of the constitutional, statutory and common-law substantive and procedural rights accorded to the said Petitioner as a citizen of Kentucky and of the United States of America.

(3) The Respondent, C. B. Russell, is a "lay judge", who has absolutely no formal training in law,

and who has not acquired either by formal education, training or experience, a sufficient body of knowledge relating to the constitutional, statutory and common-law substantive and procedural rights accorded to the Petitioner as an accused in a criminal case, for which reason the Respondent does not have the competency and the capacity to accord to the Petitioner his constitutional, statutory and common-law substantive and procedural rights which are accorded to him as a citizen of Kentucky and as a citizen of the United States of America. As a direct result of such incompetency and such incapacity, the Petitioner now resides in the County Jail in the City of Harlan, Kentucky, under a jail sentence of 30 days incarceration, upon a charge of driving while intoxicated, even though he has not been accorded the following constitutional rights accorded to him under the Fourteenth Amendment to the Constitution of the United States of America:

(1) His right to equal protection of the laws in that he has not been accorded a tribunal presided over by a judge having the competency and the capacity to accord him all of his constitutional, statutory and common-law substantive and procedural rights.

(2) He is incarcerated without benefit of any evidentiary hearing having been held although he entered a plea of "Not guilty".

(3) He is incarcerated without having had the benefit of a Jury trial.

(4) He is incarcerated without having been afforded the right to confront the witnesses against him.

(5) He is incarcerated without the benefit of having been permitted to produce any evidence in his own behalf.

(6) He is incarcerated without having been advised of his right to counsel, to trial by jury, to confrontation of witnesses against him, and to an evidentiary hearing. The trial of Petitioner in such tribunal by a judge so incapacitated deprives him of his right to due process of law as guaranteed to him by the Fourteenth Amendment to the Constitution of the United States of America.

WHEREFORE, Petitioner demands that a Writ of Habeas Corpus issue, directing the Jailer of Harlan County to present him before the Honorable Edward G. Hill, Judge, Harlan Circuit Court, at a time and place to be fixed by the Court, and directing the appearance of the said C. B. Russell and the appearance of the said Nathaniel "Trap" Helton to show cause, if any, as required by law, why the Petitioner should not be released from said detention and from custody; that, pending the hearing date and pending an evidentiary hearing on the questions presented in this petition, the Petitioner be admitted to bail; that the Respondent,

C. B. Russell, be required to deliver his driver's license to him.

This 19th day of July, 1974.

LONNIE NORTH

/s/ Eugene Goss
By _____
Attorney for Plaintiff
EUGENE GOSS
Attorney at Law
Central Street
Harlan, Kentucky

I, LONNIE NORTH, certify that I have read the foregoing Petition for Writ of Habeas Corpus and that the statements contained therein are true.

/s/ Lonnie North
LONNIE NORTH

STATE OF KENTUCKY)
) Sct.
COUNTY OF HARLAN)

Subscribed and sworn to before me by LONNIE NORTH on this 19th day of July, 1974.

/s/ Brenda L. Cassim
NOTARY PUBLIC

My Commission Expires: 8-22-75

III. Transcript of Evidence before the Trial Court

HARLAN CIRCUIT COURT
CIVIL ACTION FILE NO. 2003

LONNIE NORTH .... **PETITIONER**

VS: OFFICIAL REPORTER'S TRANSCRIPT OF EVIDENCE

C. B. RUSSELL; NATHANIEL "TRAP" HELTON, Jailer of Harlan County ..... **RESPONDENTS**

ORIGINAL TRANSCRIPT

Received from Molly Sue Baker, this 1st day of August, 1974. Mary Lou Coldiron, Clerk, Harlan Circuit Court by S. B. Jones, D.C.

Filed Aug. 5, 1974, Frances Jones Mills, Clerk, Court of Appeals.

HARLAN CIRCUIT COURT
CIVIL ACTION FILE NO. 2093

LONNIE NORTH ..... PETITIONER

VS: OFFICIAL REPORTER'S TRANSCRIPT OF EVIDENCE

C. B. RUSSELL; NATHANIEL "TRAP" HELTON, Jailer of Harlan County ..... RESPONDENTS

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HARLAN CIRCUIT COURT
CIVIL ACTION FILE NO. 2093

LONNIE NORTH ..... PETITIONER

VS: OFFICIAL REPORTER'S TRANSCRIPT OF EVIDENCE

C. B. RUSSELL; NATHANIEL "TRAP" HELTON, Jailer of Harlan County ..... RESPONDENTS

This cause came on for hearing before Honorable Edward G. Hill, Judge of the Harlan Circuit Court, on today, July 23, 1974.

On motion of the petitioner, the Official Court Reporter, Molly Sue Baker, was directed to take short-hand notes of all evidence introduced and heard, or offered to be introduced and rejected, all objections of counsel thereto, all motions, avowals and all other proceedings had on the trial of this case.

ATTORNEY FOR THE PETITIONER, LONNIE NORTH:
HONORABLE EUGENE GOSS
ATTORNEY AT LAW
HARLAN, KENTUCKY

ATTORNEY FOR THE RESPONDENT, C. B. RUSSELL:
HONORABLE WIX UNTHANK
ATTORNEY AT LAW
HARLAN, KENTUCKY

THE COURT: What says the petitioner?
MR. EUGENE GOSS: The petitioner, is ready, Your Honor.

THE COURT: Is the respondent ready?

MR. WIX UNTHANK: Yes, Your Honor.

THE COURT: All right, call your witness.

THE PETITIONER CALLED AS A WITNESS,
C. B. RUSSELL,

WHO, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. EUGENE GOSS:

1 State your name.

A C. B. Russell, Jr.

2 Were you on the 18th day of July, 1974, the appointed City Judge for the City of Lynch, Kentucky?

A I was.

3 Is that a city of fifth class located at Lynch, Harlan County, Kentucky?

A Yes, sir.

4 When were you appointed as City Judge?

A January 7th.

5 1974?

A Yes, sir. That's when I took office.

6 How much formal education do you have?

A I have a high school.

7 What kind of work have you done during your life time?

A The last twenty three years I've been an assistant mine foreman with U. S. Steel.

8 You worked as an underground coal miner?

A Yes, sir.

9 Have you ever attended any college or university?

A No, sir.

10 Do you hold any degree from any college or university?

A No, sir.

11 Have you ever attended any law school?

A No, sir.

12 Do you hold any degree from any law school?

A No, sir.

13 Prior to your appointment as City Judge of the City of Lynch, Kentucky, had you had any legal training whatsoever in the field of law?

A No, sir.

14 Prior to your appointment as City Judge of the City of Lynch, Kentucky, had you any previous judicial experience?

A No, sir.

15 Prior to your appointment as City Judge of the City of Lynch, Kentucky, had you had any previous legal experience of any kind?

A No, sir.

16 Have you had any legal training of any kind since your appointment?

A Well, the only thing I can say, if I have any doubt, I just consult with the city lawyer, Mr. Bill Forester.

17 And when you consult with the city lawyer for advice, you mean you consult the city lawyer for advice in criminal cases, such as this case?

A Yes, sir.

18 And when you receive advice from the city attorney, do you follow that advice?

A Yes, sir.

19 Are you — would you say, you very much depended upon the city attorney for giving you guidance and final advice as to what procedures you should follow and as to what actions you should take in a criminal case?

A Would you mind re-stating that?

20 Read it back.

Reporter reads back question. "Would you say, you very much depended upon the city attorney for giving you guidance and final advice as to what proce-

dures you should follow and as to what actions you should take in a criminal case?"

A If I have any doubt in any case, I contact the lawyer.

21 You contact the city prosecutor?

A Yes, sir, for legal advice.

22 You depend on his decisions and the advice he gives you as to what actions you should take both from the procedural standpoint and as to what disposition you should make of a particular question? Is that correct?

A Yes, sir.

23 Since your appointment as City Judge, have you had any legal training whatsoever?

A No, sir. As far as schooling, no.

24 Have you ever taken any course at all in legal jurisdiction?

A No, sir.

25 Have you ever taken a course of any kind or had any legal training of any nature, relating to law?

A No, sir.

26 Have you ever had any course or any training whatsoever relating to the judiciary?

A No, sir.

27 Have you ever had any course or had any training

with respect to the rules of evidence in a criminal or civil case?

A No, sir.

28 Have you ever had any course or any training whatsoever relating to the provisions of the Constitution of the United States of America?

A No, sir.

29 Are you familiar with the 14th Amendment to the Constitution of the United States and as to what it provides?

A Yes, sir.

30 What does that provide?

A Right off hand, I don't — something about judicial. I think one of them is judicial procedure or something another. I'm not for sure.

31 Do you think the 14th Amendment to the Constitution of the United States deals with judicial procedure?

A Right off hand, Mr. Goss, I couldn't tell you.

32 Are you familiar with the term "due process of law" or "equal protection of the law"?

A Yes, sir.

33 In legal meaning?

A No, that's beyond me.

34 Are you familiar with the rights according to a

defendant as accused in a criminal case under the 14th Amendment of the Constitution of the United States of America?

A Would you re-state that question?

35 Are you familiar with the rights according to a defendant as accused in a criminal case under the 14th Amendment to the Constitution of the United States of America?

MR. WIX UNTHANK: May it please the Court. At this time, we'd like to object. The witness has stated he has not had any legal training, and I think these questions here are just repetitious, bearing upon the questions of legal training.

THE COURT: I think the fact has been established that he's not a lawyer, he doesn't know any law, he hasn't studied any law.

MR. EUGENE GOSS: Judge, I think we're entitled to probe the depth of the knowledge — of his knowledge with respect to specific knowledge of various legal formulas, legal procedures, such as law. He may have some inherent knowledge that we know nothing about. I'm not going to unduly labor this thing, but I think it's important to our case that we probe with in some detail, the man's knowledge of substance and procedure of law, and I would beg the Court's indulgence that it won't take a great deal of time, but it's extremely important in our case.

THE COURT: Well, go ahead.

36 Are you familiar with the rights according to a defendant as accused in a criminal case under the 14th Amendment of the Constitution of the United States of America?

A Mr. Goss, as I previous said, I don't know, exactly understand this 14th Amendment. I know part of it.

37 Are you familiar with the statutes of the Commonwealth of Kentucky relating to the empaneling of a petit jury, the qualifications of a petit jury and the selection of a petit jury in a particular criminal case?

A Well, I think I know some of the qualifications but as far as all of them, I don't.

38 Are you familiar with the order of trial in a criminal case?

A No, sir.

39 Are you familiar with the requirements of law of the Commonwealth of Kentucky with respect to the arraignment of a defendant accused of a crime?

A Yes, sir.

40 What are those procedures?

A You mean, are you talking about when someone is arrested?

41 Yes, and arraigned?

A Placed under bond and then have a hearing. Is that what you're referring to?

42 Yes. What are the procedures for arraignment of a defendant?

A Well, to me, that's the procedure.

43 That's all the procedure that you're familiar with?

A Well, after you give them a hearing, trial by jury, if he pleads guilty. I mean not guilty.

44 Are you familiar in a general way with the rules of criminal procedure of the Commonwealth of Kentucky?

A No, sir.

45 Are you familiar in a general way with the provisions of Kentucky Revised Statutes as they relate to criminal prosecution?

A Would you re-phrase that statement?

46 Are you familiar in a general way with the provisions of the Kentucky Revised Statutes as they relate to criminal prosecution?

A Well, the only procedure I know, I can follow through the books we have up there now. Whether that answers your question or not, I don't know.

47 Do you have a copy of the Kentucky Revised Statutes in your office?

A Yes, sir.

48 Are you familiar with the Court system of the Commonwealth of Kentucky as established by the Constitution of Kentucky?

A Not altogether.

49 Are you familiar with a set of books known as the Kentucky Digest published by the West Publishing Company?

A The Kentucky Digest?

50 Do you know what that set of books is and what it's for?

A No, not off hand, I couldn't.

51 Are you familiar with a set of books known as the Kentucky Decisions published by the West Publishing Company?

A I couldn't tell you, Mr. Goss, who published them or anything else. All I know is how to go through the index and look up what I want.

52 What is your understanding with respect to the usefulness of the case decisions published by the Court of Appeals of Kentucky?

MR. WIX UNTHANK: Your Honor, I'd like to object and renew my objection.

MR. EUGENE GOSS: Judge, I've got about four or five more questions left.

THE COURT: Can't you stipulate all this?

MR. WIX UNTHANK: Yes, sir.

THE COURT: All right, fix you up a stipulation.

MR. EUGENE GOSS: Your Honor, I think I could finish my questions faster than we could stipulate it.

MR. WIX UNTHANK: Well, I'd like to renew my objection.

53 Do you know the usefulness of those, the decisions of the Court of Appeals of Kentucky?

A Do I what?

54 Do you know why the decisions of the Court of Appeals are useful in the administration of law?

A I can say misrepresentation of justice.

55 Are you familiar with the Supreme Court reports of the United States Supreme Court?

A I'm familiar with some of them, but I don't agree with all of them.

56 What is your understanding with respect to the effect that a Judge should give between conflicting rulings made by the Court of Appeals of Kentucky and the Supreme Court of the United States?

A I didn't hear that, Mr. Goss.

57 What is your understanding with respect to the effect that a Judge should give between conflicting rulings made by the Kentucky Court of Appeals and the Supreme Court of the United States of America? Do you understand the question?

A No, I really don't. I don't think I know, if it would

go to the Supreme Court from the Kentucky Court of Appeals. Is that what you're referring to?

58 Yes.

A Well, I just don't—as I say, there's a lot of cases the Supreme Court rules on I don't agree.

59 Are you a licensed lawyer?

A No, sir.

60 Judge, is it fair to say that you have only a very vague knowledge of the criminal law of the Commonwealth of Kentucky and United States of America with respect to the Constitutional and statuatory rights that a defendant has and with respect to the enforcement of those rights; and with respect to criminal procedures of criminal law as it relates to criminal trials. Is that a fair statement?

A I'd say—no, I'd say I've got very little as far as back ground, but I've got a whole lot of common sense, Mr. Goss.

61 Now, did you bring with you the order book?

A Yes, sir.

62 From the city of Lynch relating to a trial of the defendant—the petitioner, Lonnie North?

A I brought the criminal docket with me which I docketed it in the book and I also have the warrant and the breathelizer test.

63 Do you have here with you a copy of the warrant which you served on this man?

A Yes, sir.

64 And this warrant was signed by you on the 12th day of July, 1974?

A Yes, sir.

65 And in that warrant you accused him of "driving while intoxicated." Is that correct?

A Yes.

66 And you admitted the petitioner to bail in the sum of $175.00?

A Yes, sir.

67 Was that a cash bond?

A No, sir. Mr. North there, his name is on that. It's Eli North.

MR. EUGENE GOSS: Judge, we'd like to have a copy of this complaint filed with the stenographer and mark it "Judge Russell, Exhibit 1."

THE COURT: All right, have a copy made.

68 Now, you set trial on this man's case on what day?

A 18th.

69 18th of July?

A Yes, sir.

70 And on the 18th of July, did he appear in your Court?

A Yes, sir.

71 At what time?

A He was about forty minutes late, thirty five or forty minutes late.

72 What time did your Court take up?
A 7:00.

73 You mean they were late getting there?
A Mr. North here, Lonnie North was late getting there, Mr. Goss.

74 Did you, in connection with the trial of his case, give him a jury trial?
A No, sir.

75 I believe his plea was not guilty, wasn't it?
A Yes, sir.

76 And he voiced that plea in your presence and in open Court?
A Yes, sir.

77 And you proceeded then to try him yourself?
A Yes, sir.

78 Was there an evidential hearing of any kind?
A You want me to proceed to tell you how it was I started with?

79 No, I just want to know if you held, before passing judgment on him, did you hold any kind of evidential hearing?
A Yes, sir.

80 What kind of an evidential hearing did you hold?

A Well, I sworn the arresting officer in and let him tell his story without any questions from me, let him tell his part, you know, his part in it, in the arrest. When I got through, I asked Mr. North if he had anything and he said, "Yes." I asked him if he wanted—any questions he wanted to ask Mr. Potter and he said, "Yes." So he proceeded to ask him questions and when he got through, I asked him if he was through, and he said, "Yes."

81 And that's when you proceeded to find him guilty?
A Yes, sir.

82 Did you—what judgment did you make in the case?
A What sentence did I put on him?

83 Right.
A $150.00 and thirty days in jail and revoked his driver's license.

84 Now, do you have a judgment you prepared and entered into your order book, any kind of a judgment in which he is — in which that becomes the judgment of your Court?
A Yes, sir, in this docket book.

85 All right, would you find that in the docket there for me.
A Page 139, Item 411, I mean 410.

86 Would you read that, every word of that judgment to the Court?
A "On a DWI, license revoked, sentence to thirty

days in jail, fine $139.50, costs $10.50, total of $150.00. 18th day of July, 1974."

87 And that's all you've got?

A And this is my signature.

88 That's all you have on your book?

A Yes, sir.

MR. EUGENE GOSS: Judge, we'd like to enter a copy of that in to the record.

THE COURT: I don't know how you're going to make it. I think she's got the substance of it.

MR. EUGENE GOSS: All right. If the judgment as entered into the record is sufficient, do you have any objection to that, Mr. Unthank?

MR. WIX UNTHANK: No objection.

CROSS EXAMINATION BY MR. WIX UNTHANK:

1 Mr. Russell, how long have you lived at Lynch?

A Well, I was born in Lynch and I moved in 1947, 46 years old in 1947, and I moved and came back to Lynch, three years prior —

2 Well, is it a fair statement to say you've been there approximately forty years or something like that?

A Forty three years.

3 Now, what class city is Lynch?

A Fifth class.

MR. WIX UNTHANK: Mr. Goss, may it be stipulated in the record that Lynch is a fifth class municipal corporation under the laws of the State of Kentucky?

MR. EUGENE GOSS: Yes, sir.

MR. WIX UNTHANK: And that as such the statutes provide for the office of police judge for the city of Lynch?

MR. EUGENE GOSS: That's in my pleading.

MR. WIX UNTHANK: Now, is it also agreed and stipulated that driving while under the influence of intoxicating beverages is a statuatory crime in the State of Kentucky?

MR. EUGENE GOSS: Right.

MR. WIX UNTHANK: And as such, the police court of the fifth class city would have jurisdiction of this charge?

MR. EUGENE GOSS: Jurisdiction is conferred upon the police court, by the statutes.

MR. WIX UNTHANK: Now, is there any question concerning the legality of his arrest upon this charge by the officer?

MR. EUGENE GOSS: No.

MR. WIX UNTHANK: Then it is stipulated

that he was legally arrested and charged with this offense?

MR. EUGENE GOSS: That isn't brought into issue in our petition.

MR. WIX UNTHANK: No, but can it be stipulated?

MR. EUGENE GOSS: Yes.

4 Now, Mr. Russell, going back to the time that the officer came up there with the defendant, did the defendant demand a jury trial?

A The night of the hearing, is that what you're talking about?

5 Yes, sir. The night that you tried the case, did he demand a jury trial?

A He said, "not guilty." Yes, he wanted a trial by jury.

6 He said he was not guilty?

A Yes.

7 And he asked for a trial by jury?

A By the jury, yes.

8 Now, I believe you stated that you depended on the county attorney to tell you what the law was — I mean your city attorney to tell you what the law was?

A Yes, sir.

9 The city attorney of Lynch is William R. Forester?

A Yes, sir.

10 He is a member of the Harlan County Bar Association, is he not?

A Yes, sir.

11 And he's been practising law in Harlan County quite a bit?

THE COURT: Can you stipulate that Mr. Forester is competent?

MR. EUGENE GOSS: Yes, sir.

12 Now, Mr. Forester tells you what the law is but he does not tell you how to interpret it, does he?

A No, sir. He tells me, like you said, what the law is, you know. In other words, where I've got jurisdiction and like I stated awhile ago, if I have any doubt, I call our attorney. I want to be right.

13 As to how you're going to do something, you determine that yourself after he tells you what it is?

A Yes, sir.

REDIRECT EXAMINATION BY MR. EUGENE GOSS:

1 Did you empanel a jury there when he was tried?

A No, sir. We had no jury trial.

2 Prior to the commincement of the hearing which you said that you had there, did you advise the petitioner that he had a right to trial by jury, and that he had the right to introduce evidence in his own behalf and to confront the witnesses against him?
A I think so. That's usually the procedure.

3 Did you advise him that he had a right to have an attorney present to represent him in this matter?
A Yes.

4 You advised him that he had that right?
A I'm pretty sure, Mr. Goss. I'm not going to say. That's usually the standard procedure.

5 Did you advise him that he had a right, in so many words or these direct words, did you advise him in words or substance that he had the right to introduce witnesses in his own behalf?
A He had no witnesses.

RECROSS EXAMINATION BY MR. WIX UNTHANK:

1 Mr. Russell, if I may, prior to after taking his plea, did you make a telephone call to the city attorney?
A Yes, sir.

2 And I believe after you made the telephone call, you were under the impression or believed which you received the advice, that he did not have to have a jury trial. Is that correct?
A That's right.

REDIRECT EXAMINATION BY MR. EUGENE GOSS:

1 And you followed that advice?
A Yes, sir.

2 Did Mr. North have an attorney present there to represent him when you tried this case?
A No.

WITNESS EXCUSED.

THE PETITIONER,
LONNIE NORTH,
WHO, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. EUGENE GOSS:

1 State your name.
A Lonnie North.

2 Lonnie, how old are you?
A Twenty three.

3 You reside at Lynch, Kentucky?
A Yes, sir.

4 And you were residing at Lynch on Wednesday, July 10,1974?
A Yes, sir.

5 Is that the day that you were detained by the chief of police of Lynch, Kentucky?
A Yes, sir.

6 Who was that?
A Ralph Potter.

7 Ralph Potter?
A Yes, sir.

8 And how long were you detained by the chief of police?
A About a half an hour.

9 And what happened to you after that period of detention?
A He took me to city hall and he said he'd stopped me for the Cumberland Police Department. They had a warrant for me and he was going to hold me until they come and pick me up.

10 Did they come and pick you up?
A Yes, sir.

11 And then they took you to Cumberland?
A Yes, sir.

12 Did they charge you with any offense in Cumberland?
A Reckless driving.

13 Was any dispensation made of that case?
A Yes, sir. I went to Court and paid the fine.

14 Then you were — what happened to you after you were charged at Cumberland, Kentucky?

A Well, while I was down there, they called and wanted to know what they was going to do with my motorcycle, and when I got loose from down at Cumberland and I went up there to get it, and when I went up there, they had a warrant for me, arrested for DWI.

15 And then you made bond?
A Yes, sir.

16 And you went there for trial on July 18, 1974?
A Yes.

17 When you went there to the courtroom, did you arrive on time?
A I was outside there. My dad went in and talked to him.

18 You were outside the courtroom?
A Yes, sir.

19 Had you been inside the courtroom at this point of time?
A No, sir.

20 Were you at the door of the courtroom?
A Yes, sir.

21 You were there and available at all times when your case was called?
A Yes, sir.

22 When your case was called for trial, did you immediately then make your appearance?

A No.

23 Well, what did you do?

A He was inside and he told me he'd come back out and tell me when they wanted me.

24 Now, when you did go into the courtroom, just explain to the Judge precisely what happened and what the procedures were surrounding your trial there?

A I went in to the courtroom, sit down and he swore Mr. Potter in, let him give his testimony, exactly what happened that night, and he turned around and asked me how I plead, and I said, "not guilty." He told me he'd give me a jury trial if it took him all night.

25 Now, you mean that he asked Mr. Potter, Chief Potter, what happened before he took your plea?

A Yes, sir.

26 And after he took your plea, is that when he said he would give you a jury trial?

A Yes, sir.

27 Did you want a jury trial?

A Yes, sir.

28 Did you ask for a jury trial?

A Yes, sir.

29 Then, after he went out, he then came back?

A Yes, sir.

30 And what did he say then?

A He said he had called an attorney and he didn't have to give me no jury trial. He was going to pronounce sentence on me himself.

31 Then, was a hearing commenced?

A No, sir.

32 Were any witnesses ever sworn?

A No, sir.

33 Was any testimony ever taken by the Court after you entered your plea?

A No, sir.

34 Did you have a lawyer present?

A No, sir.

35 Were you advised of any of your Constitutional rights, that is your right to trial by jury, your right to have counsel present, your right to confront the witnesses against you and your right to introduce evidence on your own behalf?

A No, sir.

36 Did you have any kind of an evidential hearing there whatsoever?

A No, sir.

37 The closest thing you had to any evidence was when — had some little conference prior to your giving your plea, he asked the police chief what had happened and what the charges were about? Is that a fair statement?

A Yes, sir.

38 Were you ever sworn and were you ever given an opportunity to present in testimonial form at a hearing, your side of your case?

A No, sir.

39 What happened to you then after he said, "I'm going to pronounce sentence on you?"

A He said he sentenced me to thirty days in jail, revoked my license and fined me $150.00.

40 Then what happened to you?

A He wrote out a slip and gave it to Mr. Potter and told him to bring me to Harlan.

41 Did they—did he bring you to Harlan?

A Yes, sir.

42 Where did he lodge you?

A In the county jail.

43 How long did you stay at the county jail?

A From Thursday night at 9:00 to Friday afternoon at 3:00.

44 And you only got out of jail when the court signed the writ in this case?

A Yes, sir.

45 And fixed bail for you?

A Yes, sir.

46 Did you then get out on bail?

A Yes, sir.

47 And have you been on bail since that time?

A Yes, sir.

48 If I understand it correctly, you did enter a plea of not guilty?

A Yes, sir.

49 You did request a jury trial?

A Yes, sir.

50 You wanted a trial?

A Yes, sir.

51 You did not have a lawyer present to represent you?

A No, sir.

52 You were not advised of any of your rights?

A No, sir.

53 You had no evidential hearing?

A No, sir.

CROSS EXAMINATION BY MR. WIX UNTHANK:

1 And you didn't give any testimony?

A In my behalf? He asked me what—did I have any questions I wanted to ask and I asked him for what purpose was I there because they had arrested me for DWI earlier that night when they detained me or was it because that they wanted to hold me for the Cumberland City Police.

2 What do you mean for the Cumberland City Police?

A That's the reason he said he detained me to start with because that the Cumberland City Police had a warrant for me.

3 Why did the Cumberland City Police have a warrant for you?

A They said that the motorcycle had out run the law, and they swore the warrant out for me.

4 This was for a different date from the arrest — the officer arrested you, wasn't it?

A The same night. Identically, the same night.

5 Now, the officer when they took you up there and charged you, they didn't charge you with being down in the City of Cumberland, did they, they charged you with being up in Lynch?

A That's right.

6 So the offense in Cumberland would have been for something that would have happened in Cumberland. The

offense in Lynch was for something that happened in Lynch?

A Well, I'm just telling you exactly what he told me why I was detained to start with.

7 Well now, did you tell them your side of it—what happened?

A What do you mean?

8 Just what I said. Did you tell them your side of it, what happened?

A I didn't have no side. As far as I can see, they had no right—I shouldn't have been detained to start with.

9 All right, did they ask you what happened and did you tell them — the officer told what happened as he saw it, did you tell what happened as you saw it?

A No, sir.

10 You did not give any explanation whatsoever?

A I told them I wouldn't guilty.

11 Well, did you tell them why you weren't guilty?

A Because I wouldn't.

12 Did you tell them why?

A No.

13 You did not make any offer of explanation whatsoever?

A No, sir.

14 Now, the Judge was present at that time, wasn't he?

A That's right.

15 The officer was present at that time, wasn't he?

A That's right.

16 And they will know whether or not you offered any explanation as to the arrest?

A I didn't offer one.

17 Now, did you have any witnesses you wanted to be there?

A No, sir.

18 You did not have any witnesses to be summoned at all, did you?

A No, sir, not to court.

WITNESS EXCUSED.

THE PETITIONER CALLED AS A WITNESS,

ELI NORTH,

WHO, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. EUGENE GOSS:

1 State your name.

A Eli North.

2 Where do you live?

A Cumberland, Kentucky.

3 Were you present in the city courtroom at the City of Lynch, Kentucky, when Lonnie North was sentenced by Judge Russell?

A I was.

4 On a charge of driving while intoxicated and given thirty days in jail and $150.00 fine and driver's license suspension?

A Yes, I was.

5 Would you describe in your own words what happened from the time that Lonnie North went into the courtroom until he was taken to jail?

A Well, I went in first and talked to Mr. Russell. I asked him —

6 I'm not interested in that. I'm just interested in what happened there after Lonnie came in to the courtroom?

A Well, I walked in the courtroom and he asked me — he told Lonnie he was going to sentence him. He said, "What have you got to say," and he said, "I'm not guilty." He said, "I'm going to sentence you. I'm going to give you $150.00 fine and thirty days in the county jail," and he said, "and revoke your driver's license," and he said, "where are your driver's license at?"

7 Was any trial held?

A No. There weren't any trial.

8 No trial whatsoever?

A No trial whatsoever.

9 Lonnie did plead not guilty?

A He did.

WITNESS EXCUSED.

THE PETITIONER CALLED AS A WITNESS,

TERRY CRECH,

WHO, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. EUGENE GOSS:

1 State your name.

A Terry Creech.

2 Mr. Creech, were you present in the courtroom on July 18, 1974, in city court at Lynch, Kentucky, when Lonnie North was sentenced on a charge of driving while intoxicated?

A Yes, I was.

3 What time of night did that take place?

A 7:00 court held.

4 Now, were you present there when Lonnie was asked for his plea?

A Yes.

5 From the point Lonnie went into the courtroom on

through the time that he was led out of the courtroom and on his way to jail, will you describe what happened?

A Well, I got there about 6:30 to the courtroom.

6 Was Lonnie there with you?

A Lonnie was outside.

7 All right, go ahead.

A I went inside, he didn't, like he said. I went inside about 6:30. He had about five cases before — four or five cases before he had Lonnie's. Lonnie's was the last one on the list.

8 Go ahead.

A And when he called Lonnie's case, Lonnie was standing outside and he told everybody to come in. Lonnie come inside and Lonnie sit down and I sit down behind him, and C. B. Russell asked him did he know what he was here for and Lonnie said, "no, I don't." Not, you know, pertaining to everything. He said, "All I know about is the Lynch police held me for the Cumberland police," and he said, "Well, I'm going to charge you with DWI," and Lonnie said, "Well, I plead not guilty."

THE COURT: What's DWI?

WITNESS: Driving while intoxicated.

THE COURT: All right.

A And Lonnie said—he never gave Lonnie no rights.

He never asked him did he want a lawyer or anything. He told —

9 Did he advise him of his right not to incriminate himself?

A No. He never advised him of nothing.

10 Did he advise him of his right to a jury trial?

A No.

11 Did he advise him of his right to a hearing?

A No. Well, this mean time, Mr. Potter was gone. He had left. There was another police officer standing there. I don't know his name, Red, something or another, and he said, "Where's Mr. Porter?" He said, "I want to get this over with," and somebody said Mr. Potter was gone down the road for something. He stayed gone about fifteen minutes, Mr. Potter did. At this time, he said, "I'm going to get a jury," and he had a Bible and something in his hand, and he throwed it down, and he said, "I'll get a jury if it takes me all damn night." He said, "if we have to stay here all night." Then Mr. Potter come back, the arresting officer. He swore him in. He asked him a few questions and he asked him if he was the arresting officer and Mr. Potter said, "Yes," and he held Lonnie there for the Cumberland law. He never give Lonnie no rights at all. He just sentenced him, charged him $150.00 and told him to take him to jail.

12 Now, were these questions asked Chief Potter before Lonnie's plea was taken?

A I don't believe so.

13 In connection with the hearing, was Lonnie given an opportunity to testify in his own behalf?

A Not the way he should have. All he asked him was, he said, "Do you know what you're here for?"

14 Was a jury ever empaneled?

A No, sir.

CROSS EXAMINATION BY MR. WIX UNTHANK:

1 Son, you said, when he said did he get a hearing, you said, "not the way he should have." What did you mean by "not the way he should have?"

A No, he asked me did he testify, testify the way he should have.

2 All right, but you answered "not the way he should have." What do you mean by "not the way he should have?"

A I thought he should have had a lawyer. I thought he should have been tried by a court.

3 What were you doing down there?

A What was I doing down there?

4 Yes, sir.

A I was just sitting in listening. That's my brother-in-law. I just like to listen.

5 How come you to know he was there?

A How come I to know he was there?

6 Yes.

A Cause he had court that night. I knowed that he was.

7 Now, when I ask you a question, do you always have to repeat the question that I ask you?

A No.

8 All right. Now, when did you first find out he had been arrested?

A Friday, after work. I worked third shift, U. S. Steel.

9 How did you find out he had been arrested?

A Talk around town. I stopped at his house when I got off from work.

10 Now, you aren't any stranger to court procedure, are you?

A What do you mean by that now? I don't understand what you're talking about.

11 Have you been — you've been in and out of court before, haven't you?

A No, sir.

12 What?

A A jury court?

13 No, in a city court up there?

A Oh, yes. Yes, one time.

14 Been in there more than once, haven't you?

A No, I haven't, not in Lynch court.

15 What about your brother-in-law that's on trial here, he's familiar with the procedures, isn't he?

A I couldn't tell you that. I don't know.

16 Now, you know of your own personal knowledge he's been in court, city court up there. more than once, hasn't he?

A I've never been in the courtroom with him.

17 What about Cumberland?

A Yes, for a speeding ticket, just like I've had a speeding ticket before.

18 All right, but you fellows on traffic offenses have been in and out of court up there quite a few times, haven't you?

A No, sir, not in Lynch.

19 What about Cumberland?

A No, sir.

20 Benham?

A No, sir, never been in Benham court.

21 Cumberland?

A Yes, sir, a speeding ticket.

22 What about a peace bond? Have you been on a peace bond?
A I was charged — I'll tell you. I've been charged with speeding and public drunkness one time.

23 Were you drunk that night?
A Public drunkness?

24 Were you drunk that night?
A Which night are you referring to?

25 The night that you were there in the courtroom?
A No, sir. I had just got out of bed.

26 What shift do you work?
A Third shift, 12:00 to 8:00.

27 What?
A 12:00 to 8:00, 12:00 at night, get off at 8:00. I get home about 9:00.

28 You say that he never asked any questions of the lawyer — I mean he never asked any questions of the arresting officer?
A No, he asked Mr. Potter what took place that night.

29 Who?
A Mr. C. B. Russell.

30 All right, talking about the defendant.
A Lonnie?

31 Lonnie never asked any questions of the officer, he never told the Judge what happened, he never told the Judge his side of it?
A He asked for a trial by jury is all I know. That's all I can state.

32 Did he ever—did the Judge ask him if he had any questions he wanted to ask?
A I didn't hear him say that.

33 Are you saying he did or he didn't or you just didn't hear it?
A I'm just saying I didn't hear it. I never heard him say that.

34 In other words, you're not saying you heard everything that went on in there, are you?
A Almost everything, not everything. I won't say I heard everything that went on.

WITNESS EXCUSED.

THE PETITIONER CALLED AS A WITNESS,

HAL WOODS,

WHO, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. EUGENE GOSS:

1 State your name.
A Hal Thomas Woods.

2 Were you present in the courtroom at the city of

Lynch, Kentucky, on July 18, 1974, about 7:00 when Lonnie North was sentenced to jail?

A Yes, sir.

3 By Judge C. B. Russell?

A Yes, sir.

4 Now, from the time that Lonnie North went into the courtroom and on up until the time that he was led out by Chief Potter on his way to jail, would you describe in your own words what took place there?

A He come in. Lonnie come in approximately around 7:30, 7:35. Mr. Russell stated that he was late when he come in. He pulled out a warrant and a breathelizer statement and he told Lonnie that he was charging him with DWI. Then he asked Lonnie how he pleaded. Lonnie stated that he pleaded not guilty. C. B. turned then and told Mr. Potter that he would need a jury. Mr. Potter stated back to C.B. that he couldn't get out to get no jury on account of he was the arresting officer.

5 Talking about Chief Potter?

A Yes, sir.

6 All right, go ahead.

A And Mr. Russell left the room and come back and told Lonnie that he didn't have to give him a jury trial because he had just referred to his lawyer and he told him that he could try the case himself. Then, he swore Mr. Potter in and he asked Lonnie if he had anything to ask Mr. Potter. Then Lonnie asked Mr. Potter a question, but I don't remember what it was. He was talking to Mr.

Potter and Mr. Russell. Then Mr. Russell told him he was trying the case and he was charging him $150.00, taking his license and giving him thirty days in the county jail as of starting right then.

7 Now, was Lonnie North ever advised of his right by the Court not to incriminate himself?

A I couldn't say. You can't hear everything in there. I was in the back and I do remember that much because it was the first part of the trial and Mr. Russell could have stated it to him, I don't know.

8 Did you hear him advise Lonnie North of any of his rights?

A No, sir. Well, just when he asked Mr. Potter—he swore Mr. Potter in and asked Lonnie if he wanted to ask Mr. Potter any questions.

9 Was Lonnie given an opportunity to testify himself during any kind of a hearing?

A Well, just the first part. He asked him how he pleaded. Then he asked if he wanted to ask Mr. Potter any questions.

10 And that was the extent of the hearing?

A Yes.

11 That was the extent of the transaction there and the trial of this man?

A Yes, sir. Well, Mr. Russell stated that he had called his lawyer and he had a right—he had been advised by his lawyer that he could try the case.

WITNESS EXCUSED.

MR. EUGENE GOSS: Your Honor, that's the case.

THE COURT: Well, gentlemen, reading this case of writ of habeaus corpus, I find that the gravity of this pleading is that Judge C. B. Russell is not qualified by lack of education and training in the field of law, and I've just had an experience with a situation like this with the case against the City Judge of Harlan, Stanley Ditty. The Court of Appeals held that it wasn't necessary to be trained in the law to be the Judge in a fourth class city, and the fifth class city would be, by virtue of population, one step lower. I'm quite sure it was analogous to the fourth class city Judge's educational requirements are.

I thought I was right in the Ditty case, but the Court of Appeals said I wasn't. I'm not going to be put in a position of going against the mandate of the Court of Appeals of Kentucky that says the Judge of the lower court without legal training, without legal background, without being an attorney, any education or special training isn't qualified. I'm going to refuse to grant the relief sought under the writ.

You can draw an order, Mr. Goss.

MR. EUGENE GOSS: Your Honor, I have prepared a notice of appeal which I lodge with the court at this time, and I presume the petitioner will remain under the same bond.

THE COURT: Yes, let him remain under bond until it's finally decided. I think it would be wise before you file your notice of appeal that you put a judgment on.

MR. EUGENE GOSS: I'm going to do it today, Your Honor.

MR. WIX UNTHANK: Mr. Goss, I'm advised by the city attorney, that the court might upon his own motion, set aside that judgment and allow a new trial upon this matter.

MR. EUGENE GOSS: Trial before this man? That's what we're raising in this law suit. Now, they're talking about re-setting it.

MR. WIX UNTHANK: What I think then, I think that he should make a motion.

MR. EUGENE GOSS: Well, who's going to pay this man for the day he spent in jail?

MR. WIX UNTHANK: I mean I'm going to advise the city up there, Mr. Goss.

MR. EUGENE GOSS: Well, we didn't raise that question in our pleadings and that isn't the relief we've asked for.

Your Honor, I'll draw the judgment.

STATE OF KENTUCKY

COUNTY OF HARLAN

I, Molly Sue Baker, Official Court Reporter of the Harlan Circuit Court in July, 1974, hereby certify that the foregoing transcript is a true and correct record of all evidence introduced and heard, or offered to be introduced and rejected, of all objections of counsel thereto, all motions, avowals and all other proceedings had on the trial of this case.

Given under my hand this the 1st day of August, 1974.

/s/ Molly Sue Baker
MOLLY SUE BAKER
Official Court Reporter
Harlan Circuit Court
Harlan, Kentucky

IV. Opinion of the Trial Court

HARLAN CIRCUIT COURT
CIVIL ACTION NO. 2093

LONNIE NORTH ..... PETITIONER

VS: OPINION AND ORDER

C. B. RUSSELL; NATHANIEL "TRAP" HELTON, Jailer of Harlan County ..... RESPONDENT

The Petition for Writ of Habeas Corpus in this case came on for hearing on July 23, 1974 at the hour of 9:00 A.M. in the Harlan Circuit Court Room, Harlan, Kentucky, Edward G. Hill, presiding, and the Petitioner, Lonnie North, represented by his counsel, Eugene Goss, having appeared and announced ready and the Respondents, C. B. Russell and Nathaniel "Trap" Helton, having appeared and having announced ready, an evidentiary hearing was held by the Court, in which the Petitioner, Lonnie North, presented testimonial evidence from witnesses from which evidence it patently appears that the allegations for the Petition for Writ of Habeas Corpus are substantially true.

It is the sole contention of the Petitioner in his Writ that he is restrained of his liberty without lawful authority, for the reason that he was "tried" by a lay judge who was constitutionally disqualified from presiding in his case for the reason that the "trial judge" does not have the competency and the capacity to accord to the Petitioner his constitutional, statutory and common-law substantive and procedural rights which are accorded to him as a citizen

of Kentucky and as a citizen of the United States. The Petitioner assigns in his Petition as grounds for his release:

(1) That KRS 26.010 and KRS 26.200, conferring criminal jurisdiction upon cities of all classes and fixing the qualifications of police judges in cities of the 5th and 6th classes, deny to the Petitioner equal protection of the laws for the reason that such statutes permit a citizen in a 5th class city to be tried by a judge ignorant of the law while the same citizen residing in a 1st or 2nd class city is provided with a judge which is minimally qualified as a practicing lawyer;

(2) Also KRS 26.200 fixing the qualifications of police judges in cities of the 5th class deny to the Petitioner his right to due process of law under the Fourteenth Amendment for the reason that Respondent, C. B. Russell, holding office under such statute, is unable by training, knowledge and experience to accord to him his constitutional, statutory, and common-law substantive and procedural rights accorded to him as a citizen of Kentucky and of the United States of America, and;

(3) That the trial judge, C. B. Russell, is a "lay judge" who has no training in the law and who has not acquired either by formal education, training or experience sufficient body of knowledge relating to Petitioner's rights as to enable him to accord to Petitioner all of his constitutional, statutory and common-law substantive and procedural rights.

It must be said that the Petitioner has grounded his Petition for Writ of Habeas Corpus solely upon the

grounds of the judge's disqualifications by reason of the judge's alleged incompetency and incapacity to accord to him a fair trial. The adequacy of the proceedings themselves to accord to the Petitioner his constitutional rights are not raised in the Petition, and the Petitioner grounds his right to release solely upon what he terms to be the constitutional incapacity or constitutional disqualifications of the trial judge for the reasons above stated.

The issues presented in this Writ are similar to those issues presented in the case of *Ditty* v. *Hampton* 490 *SW2d 772* (*Ky.* 1973), wherein the Court of Appeals reversed a holding by this Court that an accused in a criminal case may not be tried by a tribunal presided over by a judge who is incapable by reason of training, experience and knowledge to accord the Petitioner a fair hearing in which he is accorded all of his rights as a citizen of Kentucky and as a citizen of the United States of America. The occurrences in this case again indicate the basic falacies in a judicial system which allows persons of insufficient training, knowledge and experience to preside at criminal trials which, inherently, require a great deal of training, knowldege, and experience, in order that each citizen be accorded the rights guaranteed to him under the law.

Obviously, the Petitioner has intentionally grounded his request for release upon the limited constitutional grounds hereinabove set forth. This Court does not feel that it should or can go beyond the Petitioner's pleadings and the evidence and accord relief to the Petitioner in a form different from that relief which he is seeking. It would be easy enough in this case for the Court to hold that, under the evidence, the Petitioner has been denied

even his most basic constitutional rights, and order him released from custody. However, he might find himself again facing the same tribunal presided over by the same judge, which would be a wholly inadequate relief of a kind completely different from that which he seeks in this proceeding.

The Court, under the rule in the *Ditty* case, *supra,* is constrained to dismiss the Petition for Writ of Habeas Corpus and to deny the relief requested by the Petitioner, but does so upon the narrow ground that the Fourteenth Amendment to the Constitution of the United States of America does not prohibit the trial of the Petitioner by the Respondent, C. B. Russell, as the duly constituted and presiding judge of the City of Lynch, Kentucky, a city of the 4th class, irrespective of the said trial judge's knowledge or lack of knowledge of the Petitioner's rights as a citizen of Kentucky and as a citizen of the United States of America, and irrespective of the ability or inability of the said judge to accord to the Petitioner those rights which he, as a citizen of Kentucky and as a citizen of the United States of America, holds under the laws of the Commonwealth of Kentucky and under the Constitution of the United States of America. In the making of such ruling, the Court reluctantly dissolves the Writ of Habeas Corpus heretofore issued, and orders the Petitioner remanded to the custody of the Harlan County Jailer.

Provided, however, should the Petitioner file a Notice

of Appeal, within the time allowed by the pertinent rules, indicating his intention to appeal this case to the Court of Appeals of Kentucky, he shall remain free under the bond previously executed by him.

This 25 day of July, 1974.

/s/ Edward G. Hill
EDWARD G. HILL, JUDGE
HARLAN CIRCUIT COURT

V. First opinion of the Kentucky Court of Appeals
RENDERED: AUGUST 12, 1974

COURT OF APPEALS OF KENTUCKY

LONNIE NORTH ..... APPELLANT

V. APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE EDWARD G. HILL, JUDGE
C.A. # 2093

C. B. RUSSELL; NATHANIEL "TRAP" HELTON, Harlan County Jailer ..... APPELLEES

PER CURIAM - AFFIRMING

This is an appeal from a judgment of the Harlan Circuit Court denying relief by way of habeas corpus from a judgment of the Lynch Police Court. Appellant's contention is that the police court judgment is void because the police judge is not a lawyer.

The motion for appeal is granted and the judgment is affirmed. cf. Ditty v. Hampton, Ky., 490 S.W.2d 772 (1973).

There being no authority for the granting of bail pending an appeal from the denial of habeas corpus, that portion of the judgment permitting the appellant to remain free on bond was erroneous, cf. Crady v. Cranfill, 371 S.W.2d 640, (1963), and should be corrected forthwith. That the appellant is not entitled to bail in this proceeding does not, however, affect his entitlement, *vel non*, to bail in the event of an appeal from the judgment of the Lynch Police Court.

As corrected in accordance with this opinion, the judgment is affirmed.

Reed, Acting Chief Justice, and Jones, Milliken, Palmore and Steinfeld, JJ., sitting. All concur.

VI. Second Opinion of the Kentucky Court of Appeals.

Rendered: March 21, 1975

COURT OF APPEALS OF KENTUCKY

74-723

LONNIE NORTH ..... APPELLANT

V. APPEAL FROM HARLAN CIRCUIT COURT
HON. EDWARD G. HILL, JUDGE
CIVIL ACTION NO. 2093

C. B. RUSSELL; NATHANIEL "TRAP" HELTON, Harlan County Jailer ..... APPELLEES

OPINION OF THE COURT BY JUSTICE PALMORE

AFFIRMING

This proceeding began with a petition for habeas corpus filed in the Harlan Circuit Court by the appellant, Lonnie North, against the appellees, C. B. Russell, police judge of the City of Lynch, and Nathaniel "Trap" Helton, jailer of Harlan County. North alleged that he was being detained in the county jail pursuant to a judgment of the police court finding him guilty of drunk driving[1] and fixing his punishment at 30 days in jail and a fine of $150.[2] Entitlement to relief by way of habeas corpus was asserted on the theory that because the statute prescribing the

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[1]KRS 189.520

[2]KRS 189.990 (10) (a.).

qualifications of police judges in fifth and sixth-class cities[3] do not require any legal training or knowledge, and because Judge Russell is a "lay" judge, unlearned in the law, the action or judgment by which North was committed to jail violated his rights of due process and equal protection of the laws under the 14th Amendment and was void.

Though sympathetic to North's constitutional argument, the trial court relied upon *Ditty* v. *Hampton*, Ky., 490 SW 2d 772 (1973), in denying relief, and the judgment was affirmed by this court in *North* v. *Russell*, Ky., 516 SW 2d 103 (1974). North then appealed to the United States Supreme Court.

In response to a jurisdictional statement and brief filed in the Supreme Court by North the Attorney-General of Kentucky filed a motion to dismiss or affirm in which the following footnote appeared:

> "The uncontested facts of this case establish that appellant requested but was denied a jury trial. Under Kentucky law he was entitled to the jury trial he requested. KRS 26.400(4). Further it appears that Judge Russell mistakenly imposed a sentence of imprisonment upon appellant for a first offense of driving while intoxicated, whereas imprisonment is not an authorized punishment for first offenders but can be imposed only upon commission of a subsequent offense. KRS 198.990(10 (a). Accordingly appellee must concede that appellant should have been granted the writ of habeas corpus for which he filed. How-

[3]KRS 26.200.

ever, appellant has never requested that a Kentucky court grant him relief to which he is entitled under Kentucky law, but has on the contrary consistently demanded that he be granted a writ of habeas corpus on the ground that the Kentucky police court system is in violation of the U.S. Constitution. It is appellee's position that even should this Court note probable jurisdiction over the constitutional issues which appappellant raises, it should nonetheless refrain from deciding the federal questions involved in this case and remand the case to the Kentucky Court of Appeals for that Court's consideration of whether or not appellant should be granted a writ of habeas corpus solely upon the basis of violations of Kentucky law which occurred in the course of appellant's trial before the Lynch Police Court."[4]

On the basis of this footnote the Supreme Court has vacated our judgment in *North* v. *Russell*, supra, and remanded the case "for further consideration in light of the position presently asserted by the Commonwealth," to the utter consternation of the appellant, who of course is interested only in the constitutional issue and vigorously contests the suggestion that he be granted relief on another and less spectacular ground. The result is that we find

[4]Since there is no official record of the proceedings in the Lynch Police Court, the Attorney General's understanding that the alleged offense was the appellant's first appears to be an assumption. It is neither alleged nor conceded to be a fact.

ourselves performing an unwilling and not altogether felicitous role in a judicial fan dance.

Appellate courts have more to do than deal with errors of which appealing parties make no complaint. It is elementary that errors of which an aggrieved party is perfectly well aware but which he chooses not to bring to the attention of the court are waived. The blunt fact is that this appellant wants only to test the constitutional status of lay judges in criminal cases, whereas the Attorney-General has no appetite for that particular field of battle.

We fully appreciate the absurdity of having a lawsuit — any lawsuit — presided over in this day and age by a person without legal training or experience. Nevertheless, it was our conclusion in *Ditty* v. *Hampton*, Ky., 490 SW 2d 772 (1973), that the federal constitution does not deny the people the right to have it that way if they so desire. Moreover, when this habeas corpus proceeding began and when it was decided in this court there was still time in which the appellant could have secured a trial *de novo* in the Harlan Circuit Court by the simple expedient of an appeal from the judgment of the Lynch Police Court. KRS 23.032; RCr 12.02 - 12.06, incl. Cf. *Colten* v. *Kentucky*, 407 U.S. 104, 112 (1972).

The constitutional issue was and is the only issue before us, and we have decided it adversely to the appellant. So again, the judgment is affirmed.

All concur.

VII. Statement of Questions Presented by Appellant in Brief before the Court of Appeals of Kentucky

COURT OF APPEALS OF KENTUCKY

FILE NO. 74-723

LONNIE NORTH ..... APPELLANT

VS:

C. B. RUSSELL; NATHANIEL "TRAP" HELTON, Harlan County Jailer ..... APPELLEES

APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE EDWARD G. HILL, JUDGE

BRIEF FOR APPELLANT

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ATTORNEY FOR APPELLANT

This is to certify that pursuant to RCA 1.250 a copy of the within Brief has been served by mail on: Honorable Wix Unthank, Attorney at Law, Harlan, Kentucky, Attorney for Appellees; Honorable Ed W. Hancock, Attorney General, Commonwealth of Kentucky, Frankfort, Kentucky 40601; and to Honorable Edward G. Hill, Judge, Harlan Circuit Court, Harlan, Kentucky 40831, this the 5 day of August, 1974.

/s/ Eugene Goss
EUGENE GOSS
Counsel for Appellant

STATEMENT OF QUESTIONS PRESENTED

I

IS THE STATUTORY SCHEME EMBODIED IN KY. REV. STAT. 26.010, 26.140, 26.150 (1), AND 26.200 INVALID UNDER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION INSOFAR AS THESE STATUTES SUBJECT THE APPELLANT, A CRIMINAL DEFENDANT CONVICTED IN CITY COURT IN A FIFTH CLASS CITY, TO TRIAL BEFORE A JUDGE UNTRAINED IN THE LAW AND UNFAMILIAR WITH THE SUBSTANTIVE AND PROCEDURAL RIGHTS GRANTED THE APPELLANT BY THE LAWS OF THE UNITED STATES AND THE COMMONWEALTH OF KENTUCKY, WHEREAS A CRIMINAL DEFENDANT ACCUSED OF IDENTICAL CRIMES IN COURTS OF IDENTICAL NAME AND TERRITORIAL AND CRIMINAL JURISDICTION IN A FIRST AND SECOND CLASS CITY IS ACCORDED A JUDGE TRAINED AS AN ATTORNEY?

II

DOES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROHIBIT THE TRIAL OF THE APPELLANT, A DEFENDANT CONVICTED OF MISDEMEANOR CHARGES ENTAILING BOTH FINE AND IMPRISONMENT, TO BE TRIED, CONVICTED AND INCARCERATED BEFORE A TRIBUNAL PRESIDED OVER BY A JUDGE WHO IS: (A) NOT COGNIZANT OR FAMILIAR WITH THE SUBSTANTIVE AND PROCEDURAL RIGHTS ACCORDED TO THE APPELLANT BY THE LAWS OF THE UNITED STATES AND THE COMMONWEALTH OF KENTUCKY AND (B) FULLY RELIANT ON THE CITY PROSECUTOR FOR LEGAL INFORMATION AND INTERPRETATION?